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*Attorneys for Defendant Meta Platforms, Inc.*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC., a Delaware  
Corporation headquartered in California,

Defendant.

Case No. 3:20-cv-08570-JD

**[PROPOSED] ORDER ON MOTION TO  
DISMISS FIRST AMENDED  
CONSOLIDATED ADVERTISER CLASS  
ACTION COMPLAINT**

Judge: Hon. James Donato

**[PROPOSED] ORDER ON MOTION TO DISMISS**

Businesses and entities who claim to have purchased advertising from Meta bring three claims on behalf of two putative classes of Facebook advertisers. Counts I and II allege violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, for monopolization (Count I) and attempted monopolization (Count II) of an alleged “social advertising” market. Count III alleges a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, relating to an alleged agreement between Facebook and Google.

Counts I and II are dismissed because it is clear on the face of Plaintiffs’ complaint that both the alleged “Copy, Acquire, Kill” scheme and the alleged “Entry and Capture” scheme occurred outside the applicable statutes of limitations and the continuing violation doctrine does not apply. *Samsung Elecs. Co. v. Panasonic Corp.*, 747 F.3d 1199, 1202 (9th Cir. 2014). The doctrine of laches, which in this context is governed by the same principle as the statute of limitations, bars Counts I and II to the extent they seek equitable relief. *Oliver v. SD-3C LLC*, 751 F.3d 1081, 1086 (9th Cir. 2014).

Independently, Counts I and II are dismissed because: (1) Plaintiffs have not plausibly alleged that the “Entry and Capture” scheme and the “Copy, Acquire, Kill” scheme had any anticompetitive effect in the alleged social advertising market. *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1198 (9th Cir. 2012); *FTC v. Qualcomm Corp.*, 969 F.3d 974, 993 (9th Cir. 2020); *Reveal Chat Holdco, LLC v. Facebook, Inc.*, 471 F. Supp. 3d 981 (N.D. Cal. 2020). (2) The “Copy, Acquire, Kill” scheme is not cognizable to the extent it is premised on a refusal-to-deal theory, *Qualcomm*, 969 F.3d at 999-1000; *FTC v. Facebook, Inc.*, 2021 WL 2643627, at \*17 (D.D.C. June 28, 2021). (3) Plaintiffs have not adequately alleged that either scheme caused them antitrust injury. *See Somers v. Apple Inc.*, 729 F.3d 953, 963 (9th Cir. 2013); *American Ad Mgmt., Inc. v. General Tel. Co. of Cal.*, 190 F.3d 1051, 1055 (9th Cir. 1999); *Feitelson v. Google Inc.*, 80 F. Supp. 3d 1019, 1029 (N.D. Cal. 2015).

Count III is dismissed as to Plaintiffs Affilious, Inc., Jessyca Frederick, Mark Young d/b/a Dinkum Hair, Joshua Jeon, and 406 Property Services, PLLC. These Plaintiffs did not purchase advertising from Meta after September 2018, the date Plaintiffs allege the agreement was executed,

1 so they lack Article III and antitrust standing to challenge the agreement. *See TransUnion LLC v.*  
2 *Ramirez*, 141 S. Ct. 2190, 2204-2205 (2021); *Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897,  
3 907-912 (N.D. Cal. 2019).

4 IT IS HEREBY ORDERED: Meta's Motion to Dismiss the First Amended Consolidated  
5 Advertiser Class Action Complaint is GRANTED. The Court holds further amendment would be  
6 futile and dismisses with prejudice. *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th  
7 Cir. 2009).

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9 DATED: \_\_\_\_\_

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HON. JAMES DONATO  
United States District Judge

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14 Submitted by:

15 WILMER CUTLER PICKERING HALE AND DORR LLP

16 By: /s/ Sonal N. Mehta  
SONAL N. MEHTA

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18 *Attorney for Defendant Meta Platforms, Inc.*  
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